



Appeal Decision

Site visit made on 2 February 2022

by R Curnow MA(TCP), BSC(Hons), CMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2022

Appeal Ref: APP/P1133/X/21/3278517

Little Oaks, West Ogwell, Newton Abbot, TQ12 6EW

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Anthony Brooks against the decision of Teignbridge District Council.
 - The application ref 21/01393/CLDP, dated 9 June 2021, was refused by notice dated 30 June 2021.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is Existing bungalow to be extended 50% to include some internal revision and external decking with balustrade. Sanitary arrangements remain the same. In conjunction with drawings 1426.01-02 A1.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Given the nature of the appeal, it was unnecessary to be accompanied by both parties at the site visit. Therefore, I undertook the visit on an Access Required basis.

Main Issue

3. The Main Issue is whether the decision made by the Council was well-founded. This turns on a whether the proposed development accords with permitted development rights set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO').

Reasons

4. An application under section 192(1)(b) of the 1990 Act allows a person to ascertain whether any operations he proposes, such as the extension that is the subject of the application, would be lawful. The onus is on the appellant in an LDC case to make out their case is lawful on the balance of probability. A LDC cannot be issued where the development proposed would be in contravention of any enforcement notice in force at the time of the application. The evidence shows that there is no enforcement notice relevant to this application.
5. Class A of Part 1 of Schedule 2 of the GPDO sets out permitted development rights to enlarge, improve or alter dwellinghouses. The Appellant's case is that

the extension he proposes is permitted development under the terms of Class A.

6. Development is not permitted by Class A, if any of a number of provisos set out in paragraph A.1. are not met by the proposed extension. If this was to be the case, an application for planning permission for the extension would need to be made. The Council's position is that the proposal does not accord with three of these provisos, as well as two within Class B of Part 1 of Schedule 2 of the GPDO.
7. It, firstly, says that it does not accord with paragraph A.1.(e)(i) of Class A; that is to say that the extension would extend beyond a wall which forms the principal elevation of the original dwellinghouse.
8. Little Oaks is a detached single-storey dwelling in the very small settlement of West Ogwell. It was created following the grant of planning permission to convert a building housing a swimming pool to an annexe to a neighbouring property. Permission was subsequently granted at appeal to allow the occupation of the building without complying with a condition restricting its use to accommodation ancillary to the host dwelling.
9. The dwelling sits in a large garden, the vast majority of which lies to its southwest, and there are further quite substantial areas of garden to its northwest and southeast. On its northeast side, there is a very small garden area and the bungalow lies within a few metres from its northeast boundary.
10. There is no statutory definition of 'principal elevation' in the GPDO. Guidance on what this means is given in the Government's publication, 'Permitted development rights for householders - Technical Guidance' September 2019, ('TG'). It states that *"in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house"*.
11. It further clarifies that a dwelling can only have one principal elevation and indicates that the identification of the principal elevation is subjective. It will entail making decisions on a fact and degree basis.
12. In this case, the Council acknowledges the difficulty in identifying the principal elevation as the dwelling was formed as the result of the conversion of an outbuilding. Although its northeast elevation (described by the Council as the north elevation) now lies very close to the boundary, as this faced its host dwelling when Little Oaks was in ancillary use, the Council describe this as the front elevation.
13. I understand why it is of the view that this might have been the case when in that use. However, that elevation is simple and utilitarian and includes an area where bins are kept and where large gas bottles are connected to pipes into the house. If it was the front elevation when the building was in ancillary use, this changed when the condition was lifted and a new 'planning chapter' for the building began. This 'chapter' is when the building originally became a dwellinghouse.

14. The southwest elevation, (referred to as the south elevation by the Council), is, in its words, the dwelling's "most architecturally considered" elevation. Therefore, it is of the view that, despite finding it to be the rear elevation, it is its principal elevation.
15. The Appellant argues that the principal elevation is that which faces the highway. I acknowledge that this is most often the case. However, on this property the elevation that faces the highway is a largely blank gable end; the exception being a small utility room window. Although I am told that a 2010 planning permission allows for a door in that elevation, I have not been given a copy of the permission and there was no door there at the time that the application was made to the Council.
16. The southwest elevation contains the main architectural features of the dwelling in the form of large patio doors, and these serve as the main entrance to the house. For this reason, on a fact and degree basis, I find that this is the Principal Elevation. For what it is worth, and it is not determinative in my decision, I also find that this is now the property's front elevation.
17. Therefore, as the proposed extension would extend beyond the wall which forms the principal elevation of the original dwellinghouse, it would not accord with paragraph A.1.(e)(i) of Class A.
18. For this reason, the appeal fails. Whilst it is not strictly speaking necessary for me to address the other reasons for not issuing a certificate, I shall for the sake of completeness.
19. Paragraph A.1.(k)(iv) of Class A, sets out that a proposal would not be permitted development under Class A if it included an extension or alteration to any part of the roof of the dwellinghouse. A feature of the proposed extension is that there would be a marked decrease in the pitch of the property's southwest roof slope. This self-evidently represents an alteration to the roof. For this reason, the proposed extension would not be permitted development and the appeal would fail on this ground.
20. Paragraph A.1.(f)(i) of Class A states that extensions that project beyond the rear wall of the original dwellinghouse by defined measurements would not be permitted development. Having given my reasons for finding that the elevation on which the proposed extension would be erected is the front elevation, the proposed extension would not be contrary to this paragraph.
21. Class B of Part 1 of Schedule 2 of the GPDO relates to roof enlargements. Amongst its terms, the Technical Guidance sets out 'The structure of the rules on permitted development', that is to say which class of Part 1 should be applied to different forms of development on dwellinghouses. It states that Class B covers additions or alterations to roofs which enlarge the house such as loft conversions involving dormer windows. On the other hand, in respect of Class A it covers the enlargement, improvement or alterations to a house such as rear or side extensions as well as general alterations such as new windows and doors. From this guidance, I find that the proposal falls to be assessed under Class A, and the reference to Class B is incorrect. Given my finding on the terms of Class A this is not determinative in my decision.

22. For the above reasons, I find that the proposed extension does not represent permitted development as it would fail to comply with the terms of Class A of Part 1 of Schedule 2 of the GPDO.

Conclusion

23. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Existing bungalow to be extended 50% to include some internal revision and external decking with balustrade. Sanitary arrangements remain the same. In conjunction with drawings 1426.01-02 A1' was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Curnow

INSPECTOR